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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,154	01/24/2001	David C. Henkemeyer	42390P10676	5249
21906	7590	05/04/2004	EXAMINER	
TROP PRUNER & HU, PC 8554 KATY FREEWAY SUITE 100 HOUSTON, TX 77024			CAO, DIEM K	
			ART UNIT	PAPER NUMBER
			2126	6

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/769,154

Applicant(s)

HENKEMEYER, DAVID C.

Examiner

Diem K Cao

Art Unit

2126

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-18 and 29-31 is/are allowed.
- 6) ☒ Claim(s) 1-8, 19, 20, 26 and 27 is/are rejected.
- 7) ☒ Claim(s) 21-25 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. This Office action is in response to the Request for Reconsideration filed on 2/23/2004.
2. Claims 1-31 remain in the application.

Allowable Subject Matter

3. Claims 9-18 and 29-31 are allowed.
4. Claims 21-25 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 does not point out and claim the purpose or use of the invention.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 6-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Asselin (U.S. 6,658,489 B1).

9. **As to claim 6**, Asselin teaches (col. 4, lines 18-63) installing a first device driver (the replacement driver is loaded), deinstalling the first device driver (if an error or incompatibility exists, the replacement driver is unloaded), installing an operative device driver which enables the hardware device and the system to operate together (the shell device driver 31 calls the original driver's reconnect() function to reconnect the original driver to the physical device).

10. **As to claim 7**, Asselin teaches the first device driver does not enable the hardware device and the system to operate together (error or incompatibility exists; col. 4, lines 31-47).

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 26-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Merkin (U.S. 5,715,463).

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12. **As to claim 26**, Merkin teaches an operating system including a plurality of interfaces to equipment of a corresponding plurality types (a plurality of device drivers ... to data processing system; col. 4, lines 50-59), one of which is the first predetermined type (display; col. 4, lines 50-59), and including a driver ID demander (The installation data profile ... display of a request for selection of a target drive; col. 7, lines 3-27), a wizard (general installation utility; col. 5, lines 14-16) including a common driver (device driver program; col. 5, lines 16-20), which when identified to the driver ID demander's requirement to identify one of the plurality interface (the first installation data profile ... actual installation of a device driver; col. 6, lines 1-24 and upon selection of an option ... installation is proceeding; col. 7, lines 3-27).

13. **As to claim 27**, Merkin teaches the common driver comprises a do-nothing driver (device driver program; col. 5, lines 16-20).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over of Asselin (U.S. 6,658,489 B1) in view Merkin (U.S. 5,715,463).

16. As to **claim 8**, Asselin does not explicitly teach receiving a request from an operating system to identify the operative device driver from among a plurality of possible device driver. Merkin teaches receiving a request to identify the operative device driver from among a plurality of possible device driver (The installation data profile ... and driver for the device driver; col. 7, lines 3-27 and a plurality of device drivers; col. 4, lines 50-59). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Asselin and Merkin because it provides a method to the users to have options of selecting the correct driver for the device to install.

17. Claims 1-5, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Merkin (U.S. 5,715,463) in view Asselin (U.S. 6,658,489 B1).

18. As to **claim 1**, Merkin teaches (col. 7, lines 3-27) receiving a request to select one of a plurality of available system elements to be installed (The installation data profile ... and driver for the device driver), receiving an identification of a system element (upon selection of a target driver or target path), and installing the one of the plurality of available system elements (installation is proceeding ... copying of the device driver into the appropriate place).

19. However, Merkin does not teach an identification of a first system element which is not of the plurality of available system elements, installing the first system element, and deinstalling the first system element. Asselin teaches installing the first system element (the replacement

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driver is loaded; col. 4, lines 18-63), and deinstalling the first system element (if an error or incompatibility exists, the replacement driver is unloaded; col. 4, lines 18-63).

20. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Merkin and Asselin because it provides a method to install the correct element that is working for both the system and hardware.

21. **As to claim 2**, Merkin teaches the identification of the system element comprises an indication of a location of the first system element (target path; col. 7, lines 3-27).

22. **As to claim 3**, Merkin teaches the identification of the system element comprises an indication of the filename of the system element (the target drive).

23. **As to claim 4**, Merkin teaches the plurality of system elements comprise a plurality of device drivers (a plurality of device drivers; col. 4, lines 50-59). However, Merkin does not teach the first system element comprises a first device driver having substantially different functionality than the plurality of device drivers. Asselin teaches the first device driver is for a hardware, and incompatible with the system (col. 4, lines 18-47). Because each hardware device has a corresponding device driver, and the first device driver is incompatible with the system, the first device driver having substantially different functionality than the plurality of device driver. It would have been obvious to one of ordinary skill in the art at the time the invention was made

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to combine the teaching of Merkin and Asselin because it provides a method to install device driver in the computer system.

24. **As to claim 5**, Merkin does not teach the first device driver comprises a do-nothing driver. Asselin teaches the first device driver could not be use for the system and the hardware device (col. 7, lines 18-47), it would have been obvious the first device driver comprises a do-nothing driver.

25. **As to claim 19**, it corresponds to the method of claim 1 and is rejected under the same ground of rejection.

26. **As to claim 20**, Merkin teaches prompting the user to gather data (The installation data profile may include several conditional operations allowing for user input; col. 7, lines 3-27) and receiving data from the user (Upon selection of a target driver or target path; col. 7, lines 3-27).

Response to Arguments

27. Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diem K Cao whose telephone number is (703) 305-5220. The examiner can normally be reached on Monday - Thursday, 9:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (703) 305-9678. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:
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